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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In Re:

Joel Rivera,

Debtor.

Chapter 7 Case No. 1-23-42603-nhl

K.L.,

Plaintiff,

-against-

Joel Rivera,

Defendant.

Adversary Case No. 1-23-01071-nhl

Bankruptcy Judge

I, Daniel S. Szalkiewicz, declare as follows:

1. I am a partner at the law firm of Daniel Szalkiewicz & Associates, P.C, attorneys of record for the plaintiff, K.L.

2. Unless otherwise stated, I have personal knowledge of the facts stated herein, and could and would testify competently to them if called to do so.

3. I make this declaration in support of Plaintiff's Request for Clerk's Entry of Default against Defendant Joel Rivera.

4. On August 24, 2023, Plaintiff filed the present action against Defendant with this Court (DE 1).

5. The Supplemental Summons and Notice of Pretrial Conference in an Adversary Proceeding was issued on October 4, 2023, wherein Defendant was directed to respond by motion or serve an answer within 30 days of the date of issuance of the summons (DE 5).

6. On October 6, 2023, the Defendant was served with copies of Plaintiff's Summons and Complaint and the annexed exhibits, as provided by Rule 4(c)(1), Federal Rules of Civil Procedure.

7. An affidavit of service indicating Defendant had been served was filed on October 6, 2023 (DE 7).

8. Defendant's time to serve an answer expired on November 6, 2023.

9. To date, more than thirty days after issuance of the summons, Defendant has not filed an answer or otherwise responded in this matter.

10. On November 3, 2023, our office received an email from Defendant's counsel in the underlying bankruptcy which indicated Mr. Rivera would not appear in this action (Exhibit 1).

11. Upon Plaintiff's information and belief, the Defendant is neither an infant nor an incompetent person requiring special service in accordance with Rule 4(g), Federal Rules of Civil Procedure, and is not serving with the armed forces of the United States entitled to the protection of 50 U.S.C. App. Section 521.

12. This belief is based upon information available at <https://scra.dmdc.osd.mil>, the Official Department of Defense Servicemembers Relief Act ("SCRA") website. I have personally reviewed the Defendant's report generated by the site, attached hereto as Exhibit 4.

13. Therefore, Defendant is not entitled to the protections of the Servicemembers Civil Relief Act.

14. The defendant is not an infant or incompetent person, as is required by Fed. R. Civ. P. 55(b)(1).

15. As of the date of my making this declaration Defendant has failed to serve or file a responsive pleading to Plaintiff's Complaint.

16. Accordingly, for the reasons set forth in Plaintiff's accompanying Memorandum in Support, Plaintiff respectfully requests that the Court enter its Order for Final Judgment by Default, granting the relief sought in the Complaint.

17. More specifically, the Complaint requested that this Court enter judgment in Plaintiff's favor and against Defendant as follows in her Complaint pursuant to 11 U.S.C. §523(a)(6) excepting from discharge the any debts owed by Defendant to Plaintiff. In the alternative it is respectfully requested that the automatic stay be lifted so that the matter can proceed in state court.

18. Plaintiff hereby withdraws her requests seeking (1) to have the matter liquidated in bankruptcy court and (2) the costs of this action to Plaintiff, including reasonable attorneys' fees, without prejudice.

19. A proposed order consistent with the above is submitted concurrently herewith. I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on December 13, 2023 in New York, New York.

Daniel Szalkiewicz & Associates, P.C.

/s/Daniel Szalkiewicz

By: Daniel S. Szalkiewicz, Esq. (DS2323)

23 West 73rd Street, Suite 102

New York, New York 10023

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of December, 2023, I caused to be sent by United States Postal Service, the foregoing document, and thereby caused service of the foregoing document on non-ECF participant Defendant to the following address of record:

Joel Rivera
73-14 Woodhaven Blvd., Apt 1A
Glendale, NY 11385

/s/Daniel Szalkiewicz
By: Daniel S. Szalkiewicz, Esq.
Attorney for Plaintiff